

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

EDWARD QUIJADA  
(Claimant)

PRECEDENT  
BENEFIT DECISION  
NO. P-B-67  
Case No. 69-3584

S.S.A. No. :

U. S. NAVAL AIR FACILITY  
(Employer)

The claimant appealed from Referee's Decision No. SD-UCFE-6017 which held him ineligible for unemployment insurance benefits for federal employees for the period May 25, 1969 to July 27, 1969 under the provisions of section 1253(c) of the California Unemployment Insurance Code on the ground that the claimant was not available for work. The referee also held "Beginning July 27, 1969 the claimant is eligible for benefits under section 1253(c) of the code."

STATEMENT OF FACTS

The claimant was last employed as a heavy equipment operator by the above identified employer for approximately four and one-half years. This employment terminated on or about May 23, 1969 because the claimant was no longer physically able to perform the duties of the job. He filed a claim for unemployment insurance benefits for federal employees effective May 25, 1969 in the El Centro office of the Department. He was classified occupationally as a heavy equipment operator and the Department issued a determination holding the claimant ineligible for benefits under section 1253(c) of the Unemployment Insurance Code commencing May 25, 1969

and "ending when the disqualifying conditions no longer exist." This determination was based on the following finding of the Department:

"You state you are not physically able to work in your usual occupation nor in any other occupation in which you are qualified by experience or training. . . ."

At the referee's hearing which was held in El Centro on July 24, 1969, the claimant testified that while he could not perform work requiring him to be continuously outdoors, he could perform clerical work or retail sales work indoors. He also testified that he had attempted to find these types of work by contacting a variety of employers and was willing to accept such work at the prevailing wage scale.

The referee found that a labor market existed for the claimant and, based on the claimant's unrefuted testimony, concluded that he was available for work as of the date of the hearing.

#### REASONS FOR DECISION

Chapter 85, Title 5, of the United States Code and supplementary regulations provide for unemployment insurance benefits to be paid to federal employees. Entitlement to such benefit payments shall be determined under the provisions of the unemployment insurance law of the agent state, in this case California.

Section 1253(c) of the California Unemployment Insurance Code provides:

"1253, An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that:

\* \* \*

"(c) He was able to work and available for work for that week."

There is no question that the claimant is physically unable to perform work as a heavy equipment operator. However, based on his testimony, the referee found that there was other work which the claimant could perform and for which an adequate labor market existed and, at least as of the date of the referee's hearing, the claimant met the availability requirements of section 1253(c) of the code. This finding of the referee is not arbitrary, but is supported by the weight of the evidence and therefore we shall adopt it as our own. (Appeals Board Decision No. P-B-10)

The referee's hearing was held on Thursday, July 24, 1969 and he concluded that the claimant was ineligible under section 1253(c) of the code until July 27, 1969, and beginning July 27, 1969 he met the eligibility requirements of section 1253(c) of the code.

Such a prospective decision relative to the claimant's availability for work may not be made. This is true not only because of the specific language contained in section 1253(c) of the code ("was able to work and available for work for that week"), but also because, as we have stated in many prior decisions, in order to be found available for work a claimant must show that he was available for work during each and every regular workday of that week. Such decision may not be made until after the week for which benefits are claimed has passed. In addition, it should be pointed out that section 5037, Title 22, California Administrative Code, limits the jurisdiction of the referee as follows:

". . . In an appeal from a determination the claimant's entitlement to benefits from the effective date of such determination to the date of the hearing may be in issue. . . ."

Thus, in this case the referee, by prospectively deciding the claimant's availability for work, exceeded his jurisdiction. He should not have decided the claimant's entitlement to benefits under section 1253(c) of the code for any period subsequent to the date of his hearing. When the referee found that as of the date of the hearing the claimant met the availability requirements of the code, he should have returned the matter to

the Department for a redetermination as to the claimant's eligibility under code section 1253(c) with respect to weeks subsequent to the referee's hearing for which the claimant may claim benefits.

DECISION

The decision of the referee is modified. The claimant was ineligible for benefits under section 1253(c) of the code commencing May 25, 1969. The matter is returned to the Department in accordance with the above.

Sacramento, California, February 26, 1970

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

DON BLEWETT

CONCURRING - WRITTEN OPINION ATTACHED

LOWELL NELSON

JOHN B. WEISS

CONCURRING OPINION

We concur.

Insofar as they have gone in this matter we concur with our colleagues. Without question, the referee's jurisdiction to determine eligibility is limited to the period prior to the date of the hearing and it is the Department's responsibility under section 1253(c) of the code to determine the claimant's eligibility with respect to weeks subsequent to the hearing. However, as to those conditions which existed before the hearing and which formed the factual matrix from which the referee's decision evolved; if these conditions continue unchanged and unsupplemented after the hearing, we believe that the Director of the Department is then bound by the referee's decision in reaching the Departmental determination in that particular continuing case as to eligibility for weeks subsequent to the hearing. In other words, where the factual matrix is unchanged, the issue of eligibility under section 1253(c) is res judicata.

LOWELL NELSON

JOHN B. WEISS